IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 88 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MEMAN JAVED KARIM

Appearance:
MR SR DIVETIA, A.P.P. for the State
MR YOGESH S LAKHANI for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 07/04/99

ORAL JUDGEMENT

(Per : Panchal, J.)

In this appeal, which is filed under section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned acquittal of the respondents recorded by the learned Additional Sessions Judge,

Junagadh, in Sessions Case No. 152/91 vide judgment and order dated October 30, 1991 for the offences punishable under sections 498-A and 306 of the Indian Penal Code.

2. As per the prosecution case, marriage of respondent no.1 with deceased Samimben had taken place 13 months prior to the date of the incident, which is September 27, 1991. After the marriage, respondent no.1 and the deceased were residing in joint family consisting of mother of respondent no.1 and four sisters, but as quarrels were taking place, respondent no.1 and Samimben had separated from joint family and were residing separately at another place. It is the case of the prosecution that though respondent no.1 and deceased Samimben were residing separate, mother-in-law and sisters-in-law of deceased Samimben were instigating respondent no.1, as a result of which respondent no.1 was beating Samimben and was meting out cruelty to her. On July 8, 1991, deceased and respondent no.1 had gone to attend marriage of one Gafurbhai, who was close relative of both of them, but a quarrel had taken place between respondent no.1 and the deceased over fondling of their son Hasan by sister of tender age of respondent no.1 and both had returned home at about 11.00 P.M. On July 9, 1991 at about 12.45 A.M. deceased Samimben doused her body in kerosene and set herself on fire. The respondent no.1 was awaken because of the shouts of deceased Samimben and he removed deceased Samimben to Burns Department of Junagadh Hospital. At the hospital, her dying declaration was recorded by Executive Magistrate Mr. K.L. Sangani. The complaint lodged by deceased was also recorded by Head Constable Mohamad Salambhai at about 3.15 A.M. The First Information Report was sent to Junagadh City Police Station for the purpose of registration where the complaint was registered as C.R. II. No.308/91. Samimben, who had sustained extensive burn injuries, expired at about 6.00 A.M. on July 9, 1991 during the course of treatment. The dead body was sent for autopsy and autopsy was performed by Dr. R.M.Joshipura as well as by Dr. M.R.Mehta. The investigating officer recorded statements of witnesses who were found conversant with the case and ultimately at the conclusion of investigation, chargesheet was submitted against the respondents in the Court of learned Chief Judicial Magistrate, Junagadh. The offence punishable under section 306 I.P.C. is exclusively triable by a Court of Sessions and, therefore, the case was committed to Sessions Court, where it was numbered as Sessions Case No. 152/91. The learned Judge framed charge against the respondents at Exh.1 for the offences punishable under sections 498-A and 306 of the Indian

Penal Code. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. Therefore, prosecution examined; (1) Kirit Laxmidas Sangani, PW 1, Exh.11, (2) Dr. Mukesh Revashanker Mehta, PW 2, Exh.14, (3) Nurbai Mubarak, PW 3, Exh.16, (4) Nashimaben Harunbhai, PW 4, Exh.17, (5) Mohmad Shalambhai, PW 5, Exh.22, (6) Keshavbhai Haribhai Gurav, PW 6, Exh.25, and (7) Dasharathsinh Sabhuji Vaghela, PW 7, Exh.27, to prove the case against the respondents. The prosecution also produced documentary evidence, such as, dying declaration recorded by Executive Magistrate Mr. Sangani at Exh.13, postmortem notes prepared by Dr. Mehta at Exh.15, inquest report at Exh.18, panchnama of place of occurrence at Exh.19, F.I.R. lodged by the deceased at Exh.23 etc. to prove its case against the respondents. After the witnesses for prosecution had been examined, learned Judge questioned the respondents generally on the case and recorded their statements under section 313 of the Code of Criminal Procedure, 1973. In their statements, the respondents stated that the case of prosecution against them was false. The respondent no.1 specifically stated that dying declaration recorded by Executive Magistrate Mr. Sangani wad tutored one and was dictated at the instance of Faridaben Aminbhai as well as other relatives. The respondents did not lead any evidence in their defence.

3. After taking into consideration the evidence led by the prosecution and hearing the learned Counsel for the parties, learned Additional Sessions Judge held that the evidence of witness Nasimaben Harunbhai and Nurbaiben was not relevant for the purpose of bringing home guilt to the respondents, as they had not supported the prosecution case. The learned Judge deduced that the deceased had sustained severe burn injuries and was, therefore, not in a position to make any statement at all, as a result of which, dying declarations recorded by Executive Magistrate Mr. Sangani and the complaint recorded by police head constable Mr.Mohmad Salambhai were not reliable. In ultimate decision, the learned Judge acquitted the respondents vide judgment and order dated October 30, 1991, giving rise to present appeal.

4. Mr. S.R.Divetia, learned Counsel for the State submitted that reasons given by the Trial Court for disbelieving dying declarations are not cogent as well as convincing and placing reliance on them, the respondents should be convicted for the offences with which they were charged. It was pleaded that the evidence of Executive Magistrate clearly establishes that the deceased was

conscious as well as in a fit state of mind to make statement and, therefore, dying declaration recorded by the Executive Magistrate which was produced at Exh.13 ought to have been relied upon by the learned Judge. The learned Counsel emphasised that the evidence of duty head constable Mohmadbhai Salambhai proves beyond reasonable doubt that he had recorded the complaint of the deceased as narrated by her and the deceased was fully conscious at the time when the said complaint was written down by the police constable Mohmadbhai and, therefore, placing reliance on the evidence of the said witness, the respondents ought to have been convicted for the offences punishable under section 498-A read with section 306 of the Indian Penal Code. What was emphasised was that the reasons given by the learned Judge for acquitting the respondents are vague and contrary to the evidence on record and, therefore, appeal of the State Government should be accepted.

5. Mr. Y.S.Lakhani, learned Counsel for the respondents contended that well reasoned acquittal recorded by the learned Additional Sessions Judge should not be disturbed by the Court in present appeal when the prosecution has failed to prove its case against the respondents and, therefore, appeal should be dismissed. The learned Counsel claimed that close relatives of the deceased had not supported the prosecution case and as two dying declarations are of doubtful nature, acquittal of the respondents should be upheld by the Court. What was emphasised was that even if two dying declarations are believed to be true, no case is made out against any of the respondents either under section 498-A or under section 306 of the Indian Penal Code and, therefore, the appeal should be dismissed.

6. We have taken into consideration the record of the case and we have also heard the learned Counsel for the parties at length. The fact that deceased Samimben committed suicide in the early hours of July 9, 1991, is not in dispute. In order to bring home guilt to the respondents, prosecution examined witness Nurbai Mubarak at Exh.16. She is the mother of the deceased. Her evidence clearly indicates that 7 to 8 months prior to the date of incident, the deceased was staying separately with her husband i.e. with respondent no.1. Her evidence further establishes that on July 8, 1991, deceased in company of respondent no.1 had gone to attend marriage of their close relative Gafurbhai and had returned to their house at about 11.00 A.M. According to her, she was informed at about 12.45 A.M. about the incident and she had gone to Junagadh Civil Hospital

where deceased Samimben was admitted for treatment. This witness has clearly stated in her evidence that she had made inquiry with her daughter, but her daughter had not stated to her that because of cruelty meted out by the respondents, she had committed suicide. It is true that this witness was declared hostile and was confronted with her previous statement recorded during the course of investigation, but merely because she was permitted to be cross-examined by the prosecution, that fact by itself would not render her evidence as totally unreliable. Her evidence does not indicate in any manner that any cruelty was meted out by any of the respondents to the deceased. Similarly, evidence of witness Nashimaben Harunbhai, who is sister of the deceased, also does not establish any case against any of the respondents. This witness testified before the Court that on July 8, 1991, she had gone to attend marriage of Gafurbhai during night hours and quarrel had taken place between respondent no.1 and the deceased in respect of their son Hasan, but this witness did not state in her evidence that any cruelty was meted out by any of the respondents to the deceased. This witness was also permitted to be cross-examined by the prosecution and was confronted with her previous police statement, but the fact remains that her evidence does not disclose that any offence was committed by the respondents either under section 498-A of I.P.C. or under section 306 of I.P.C. The prosecution has mainly relied upon two dying declarations alleged to have been made by the deceased for the purpose of proving its case against the respondents. In our view, the learned Judge was not justified in discarding those two dying declarations on the ground that the deceased could not have made such statements because of burn injuries sustained by her. The evidence of Executive Magistrate Mr. Sangani clearly establishes that before recording dying declaration of the deceased, he had ascertained from the doctor as to whether the deceased was conscious or not and was in a fit state of mind to make statement or not and after ascertaining that she was fully conscious, her statement was recorded. The dying declaration bears endorsement of the doctor indicating that the deceased was conscious at the time when her dying declaration was recorded by the Executive Magistrate Mr. Sangani. Similarly, evidence of duty head constable also clearly establishes that he had recorded the complaint as narrated by the deceased and the deceased was fully conscious at the time when he had recorded her complaint. Merely because the deceased had sustained 90% burns, one would not be justified in coming to the conclusion that she was not in a position to speak or make statement at all. The evidence of Executive

Magistrate Mr. Sangani read with the evidence of Dr. Mehta as well as duty head constable makes it clear that the deceased at the time of making two statements was fully conscious and the Executive Magistrate as well as police head constable had recorded her statements as made by her. In the light of two dying declarations of the deceased, the guilt or otherwise of the respondents will have to be decided. In our view, even if those statements are taken into consideration, no case is made out by the prosecution against any of the respondents. In the first statement which was recorded by Executive Magistrate Mr. Sangani, the deceased stated that she was fed-up with her mother-in-law and sisters-in-law and, therefore, she committed suicide. In answer to one question, she stated that all the sisters-in-law were meting out cruelty to her, but it was not specified by her as to which type of cruelty was meted out to her and by whom. She clearly stated in her statement that she was residing separately with her husband and son at Balochwada. It is true that in the complaint, which will have to be treated as her second dying declaration, it was stated by her that she was being harassed by her mother-in-law as well as sisters-in-law and they were instigating respondent no.1 to beat her. We find that the said statement made by her in the complaint is quite inconsistent with what she had stated in the dying declaration recorded by Executive Magistrate Mr.Sangani. Though two statements were recorded one after another in succession, they are not consistent in material particulars. The fact that the deceased had gone to attend marriage of Gafurbhai in the company of respondent no.1 on July 8, 1991 and there some quarrel had taken place between her and respondent no.1 over fondling of their son by young sister of the respondent no.1, is not mentioned by the deceased in any of her statements. The evidence of Nurbai Mubarak, who is mother of the deceased as well as evidence of Nashimaben Harunbhai, who is sister of the deceased, makes it clear that two sisters of respondent no.1 were married and were staying with their in-laws at different places. Thus those sisters were not in a position either to instigate respondent no.1 to beat the deceased or to met out any cruelty to deceased. In the F.I.R. which is treated as dying declaration, deceased did not state as to which type of cruelty was meted out to her by her sisters-in-law and when, nor reason for such behaviour on part of sisters-in-law is specified. Thus the statement made against the respodnents in F.I.R. is vague. False implication of those sisters-in-law who were residing with their respective in-lws is apparent. The record further indicates that two sisters-in-law who were of

tender age, were also prosecuted, but their trial was separated, as they were of tender age. This indicates tendency on the part of the deceased to implicate relatives of respondent no.1 falsely in the case. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that it is not established by the prosecution that deceased Samimben was subjected to cruelty either by respondent no.1 or by any of the other respondents so as to drive her to commit suicide. The evidence on record does not indicate that she was subjected to any harassment with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or on account of failure by her or any person related to her to meet such demand. The prosecution has failed to prove that the respondents abetted commission of suicide by deceased Samimben. Under the circumstances, we are of the opinion that acquittal recorded by the learned Additional Sessions Judge, Junagadh is eminently just and the appeal cannot be accepted.

7. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124 and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the ultimate conclusion drawn by the learned Judge for acquitting the respondents. The learned Additional Public Prosecutor has failed to convince us to take the view contrary to the one already taken by the learned Judge and, therefore, the appeal is liable to be rejected.

For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and

is dismissed. Muddamal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

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